APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,400	10/03/2003	Robert M. Congdon	LOT920030027US1 (012)	3520

46321   7590   10/01/2010
CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP
STEVEN M. GREENBERG
950 PENINSULA CORPORATE CIRCLE
SUITE 2022
BOCA RATON, FL 33487

EXAMINER
EL CHANTI, HUSSEIN A

ART UNIT	PAPER NUMBER
2457	

MAIL DATE	DELIVERY MODE
10/01/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

————————

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

————————

Ex parte ROBERT M. CONGDON and WEI-LEE H. JAMROG

————————

Appeal 2009-006632
Application 10/678,400
Technology Center 2400

————————

Before KENNETH W. HAIRSTON, JOHN C. MARTIN,
and THOMAS S. HAHN, *Administrative Patent Judges.*

HAIRSTON, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

In a Decision dated May 27, 2010, the Board affirmed the Examiner's
anticipation rejection of claims 1 to 14. Appellants have requested a
rehearing of our decision to affirm the Examiner's anticipation rejection of
claims 1 to 14 (Req. Reh'g. 1, 3).

In the Decision, we determined that Appellants have not demonstrated
that the Examiner erred by finding that DeAnna teaches "'logical grouping
of application server nodes disposed and executing within an application
server,'" as set forth in claim 1 (Dec. 10).

We have reconsidered our Decision of May 27, 2010, in light of Appellants' comments in the Request, and we find no errors therein. We therefore decline to change our prior decision for at least the following reasons.

In the decision, the Board provided some elucidation of the portions of Appellants' Specification related to the claimed "application server nodes" (Dec. 3-4; FF 1 and 2), as well as the teachings of DeAnna (Dec. 4-5; FF 3 and 4). Based upon the teachings of DeAnna (*see* Dec. 7-9; FF 3 and 4), the Board affirmed the anticipation rejection of all of the claims on appeal.

Appellants do not dispute (*see generally* Req. Reh'g 2-3) any of the factual findings made in our Decision (*see* FF 1-4 at Dec. 3-5). Instead, Appellants contend (Req. Reh'g. 2) that "the Board has determined the meaning of 'application server nodes' to be ambiguous and thus inclusive of 'application operating on a server.'" We disagree. In light of Appellants' originally filed Specification and claims, we found the meaning of "application server nodes" to be broad, not necessarily ambiguous (*see* Dec. 7-9).

Although Appellants admit that they "have not claimed 'application server nodes, each of the nodes hosting execution of an application server, each application server hosting an API [application program interface] to expose business logic and business processes for use by other applications'" (Req. Reh'g 3), Appellants contend that "the plain claim language of 'application server nodes' provides a specific meaning that distinguishes past the basic concept of an application executing in a server" (Req. Reh'g.

3). Appellants contend that "the evidence of record demonstrates the industrially understood meaning of 'application server'" [is][sic] a 'server that hosts an API to expose Business Logic and Business Processes for use by other applications'" (Req. Reh'g. 2-3); however, Appellants notably do not contend that the term "application server nodes" is defined in the originally filed Specification and claims.

Our review of the Specification (*see* FF 1 and 2 citing Spec. 5:16-19 and 9:11-17, portions of the Specification describing "application server nodes" and "enterprise beans" that are disposed in the application server 100) does not persuade us that our construction of the term "application server nodes" is in error. Appellants' arguments in the Request are unpersuasive in view of the Examiner's findings (Ans. 3 and 6-8), our findings (Dec. 3-5; FF 1-4), and our discussion *supra,* with respect to Appellants' disclosure in the Specification concerning "application server nodes" and the applications located within the ZDF server 50 of DeAnna.

In our Decision of May 27, 2010, we explained our interpretation of the term "application server nodes" as follows:

> Claim 1 merely requires a plurality of "application server nodes" (*see* claim 1). The broadest reasonable interpretation of the phrase "application server node" indicates that points in a network topology or links/interface points such as 171, 172, and 174 shown in DeAnna's Figure 4 function as recited in the claims (e.g., being disposed and executing within an application server such as ZDF server 50) and would be encompassed by the language of the claims. *See Am. Acad. of Sci. Tech. Ctr.,* 367 F.3d at 1364.

(Dec. 7-8). We also explained why our interpretation is not precluded by the Specification, as follows:

A proper interpretation of claim 1, giving this claim its
broadest reasonable interpretation consistent with the
Specification as understood by one of ordinary skill in the art
(*Phillips*, 415 F.3d at 1315) must be construed to be consistent
with any definition provided in the originally filed
Specification. The Specification (Spec. 5:16-19, 9:11-17; *see*
FF 1, 2), however, does not provide any definition for
"application server nodes." In fact, the Specification at page 9
supports the Examiner's position, considering that (i) the
Specification describes an application server 100 that has
enterprise beans disposed thereon (*see* Spec. 9:13-15), and (ii)
DeAnna also has session beans or applications such as timer
171, receiverMDB 172 (message driven bean), and
mailprocessorMDB 174 (message driven bean) (FF 3; *see* col.
15, ll. 16, 37, and 55).

Because (i) DeAnna teaches an IMAP compliant mail
server coupled to a plurality of applications or session beans
disposed in and operating on a ZDF server, and (ii) one of
ordinary skill in the art would understand that an application or
session bean (e.g., applications 171, 172, and 174) operating on
an application server (e.g., ZDF server 50) can be considered an
application server node, DeAnna necessarily functions in
accordance with, or includes, the claimed limitation of "a
logical grouping of application server nodes" in an "application
server." Appellants' originally filed Specification and claims do
not preclude such a broad, but reasonable, interpretation of the
term "application server nodes."

(Dec. 8-9).

We have carefully considered the arguments as to claim 1 raised by

Appellants in the Request for Rehearing, but none of these arguments is

persuasive that the original decision was in error. We find that Appellants

have not shown the Board erred in finding that DeAnna teaches "a logical

grouping of application server nodes disposed and executing within an

application server" in sustaining the rejection of claims 1 to 14 under 35
U.S.C. § 102(e).

Although the heading on page 2 of the Request for Rehearing implies
that Appellants request rehearing of the rejection of claims 2 to 14, we note
that Appellants do not provide any separate arguments on the merits as to
claims 2 to 8 which depend from claim 1, or as to independent claim 9 and
its dependent claims 10 to 14. Based on (i) the content of Appellants'
Request for Rehearing, which only discusses claim 1 on the merits, (ii) the
fact that the term in question ("application server nodes") does not appear in
claim 9, and (iii) Appellants' failure to dispute our conclusion that claims 2
to 14 stand or fall with claim 1 (*see* Dec. 6), we only reconsider our decision
with respect to claim 1.

In summary, Appellants' Request for Rehearing has been granted to
the extent that our Decision has been reconsidered, but such request is
denied with respect to making any modifications to the decision.

<u>REHEARING</u>
<u>DENIED</u>

KIS

CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP
STEVEN M. GREENBERG
950 PENINSULA CORPORATE CIRCLE
SUITE 2022
BOCA RATON FL 33487